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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,225	02/05/2001	Robert B. Havekost	06005/35530	1536
4743	7590	03/24/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			MCCARTHY, CHRISTOPHER S	
			ART UNIT	PAPER NUMBER
			2113	
DATE MAILED: 03/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/777,225	HAVEKOST ET AL.
	Examiner	Art Unit
	Christopher S. McCarthy	2113

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 February 2004.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-43 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-28 is/are allowed.  
 6) Claim(s) 29,33-35,37,40 and 41 is/are rejected.  
 7) Claim(s) 30-32,36,38,39,42 and 43 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 05 February 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 6.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: Response to arguments.

## **DETAILED ACTION**

1. Claims 29, 33-35, 37, 40-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Konar U.S. Patent 6,535,769, as cited in prior office action, which was mailed on 11/04/2003.
2. Claims 1-28 are allowed, as cited in prior office action, which was mailed on 11/04/2003.
3. Claims 30-32, 36, 38-39, 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, as cited in prior office action, which was mailed on 11/04/2003.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29, 33-35, 37, 40-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Konar U.S. Patent 6,535,769.

As per claim 29, Kolnar teaches a device that manages failures for use in a process control system having a unit module and a plurality of control modules communicatively coupled to the unit module that carry out a process (column 1, lines 43-56), the device comprising: a controller having a memory (column 1, lines 57-65) and a processor communicatively coupled to the memory (column 1, lines 43-56, wherein the processor is inherent in the coupled computer), wherein the controller is programmed to use composite failure codes to determine whether the process should be stopped (column 6, lines 32-36).

As per claim 33, Kolnar teaches a process control system for carrying out a process, the process control system comprising: a plurality of field devices (column 3, lines 14-23); a controller communicatively coupled to the plurality of field devices and including a unit module that carries out at least a portion of the process (column 1, lines 57-65), wherein the unit module causes the controller to process a group of composite failure codes to determine whether the process should be stopped (column 6, lines 32-36).

As per claim 34, Kolnar teaches the process control system of claim 33, wherein the group of composite failure codes is generated by a plurality of control modules (column 4, lines 46-53).

As per claim 35, Kolnar teaches the process control system of claim 34, wherein the plurality of control modules are instantiated within the plurality of field devices (column 4, lines 4-53).

As per claim 37, Kolnar teaches the process control system of claim 34, wherein each of the control modules uses a list of failures to generate its respective composite failure code (column 4, line 58 – column 5, line 4).

As per claim 40, Kolnar teaches the process control system of claim 33, wherein the unit module causes the controller to select the group of the composite failure codes based on a current phase of the process (column 2, lines 24-52).

As per claim 41, Kolnar teaches the process control system of claim 33, wherein each of the control modules automatically sends its respective composite failure code to the controller (column 4, lines 17-22).

#### ***Response to Arguments***

5. Applicant's arguments filed 2/4/2004 have been fully considered but they are not persuasive.

Applicant argues that "Konar fails to disclose the use of composite failure codes of any kind, much less using composite failure codes to determine whether a process should be stopped." Examiner respectfully disagrees. Konar discloses that the operation of the system will discontinue if a "trouble" condition is generated in a failure code (column 6, lines 30-54).

Applicant argues that Konar discloses only a single error code and directs the examiner to the definition of "composite failure code" in the applicant's specification (page 6), which reads "composite failure codes *may* represent a combination of multiple pieces of failure information..." The auxiliary verb "may" implies a possibility, not an absolute. By using the word "may", the applicant has only suggested a definition. Konar does teach error codes that are

composed of different components. The term "composite failure code", in its broadest sense, is fulfilled by the invention of Konar. Therefore, all applicable rejections stand.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. McCarthy whose telephone number is (703)305-7599. The examiner can normally be reached on M-F, 8 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (703)305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

csm  
March 19, 2004

  
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